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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944.

Jesse Mitchell, Clarence Evans, and John T. Waddill as members of the State Tax Commission of Missouri, Forrest C. Donnell, Dwight H. Brown, Roy McKittrick, Forrest Smith, and Wilson Bell, as members of the State Board of Equalization of the State of Missouri, *Petitioners,*

V.

Cairo Bridge Commission, *a Body Corporate and Politic.*

No. 504

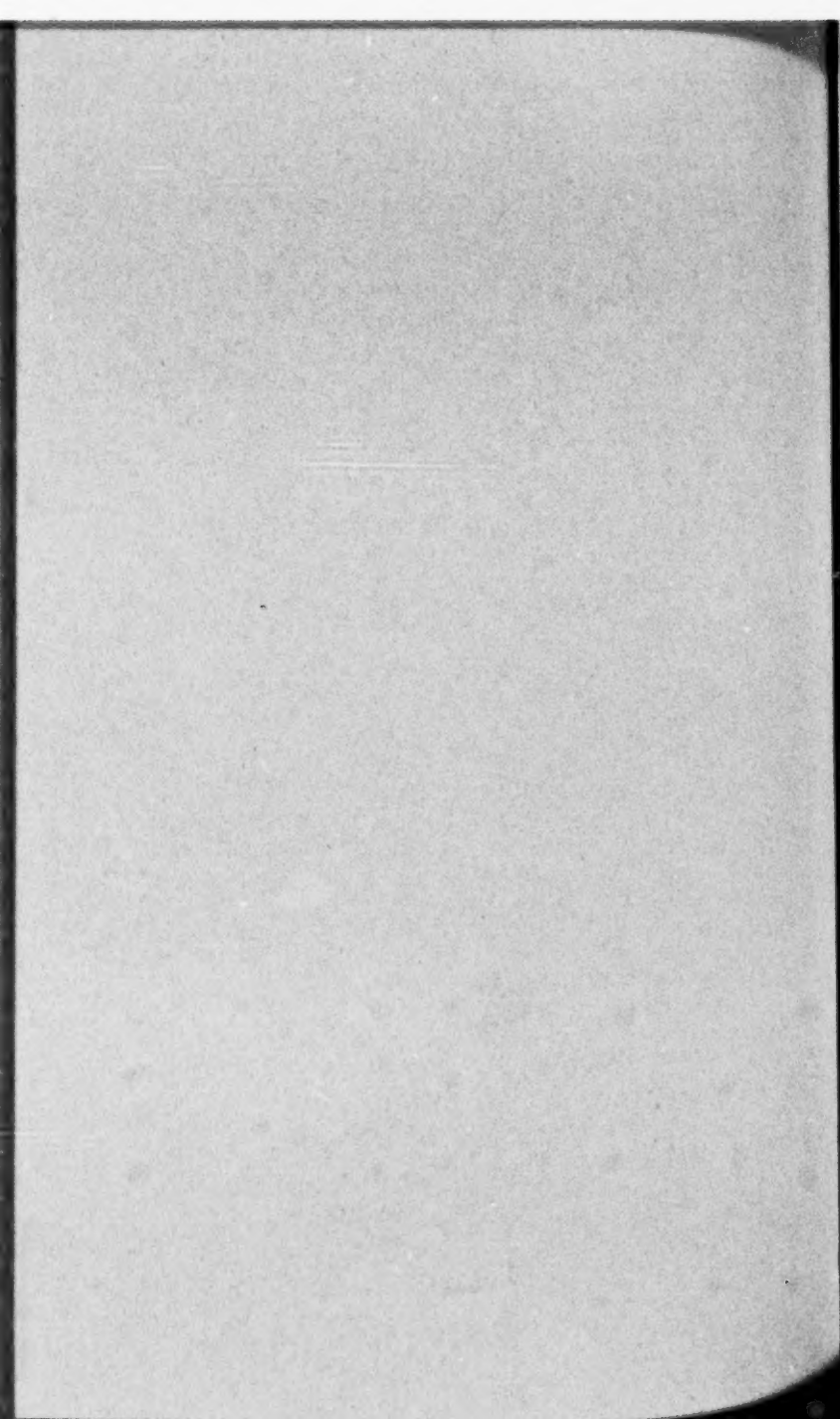
PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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ROBERT J. FLANAGAN,
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V.

State of Missouri at the relation of the Cairo Bridge Commission, *a Body Corporate and Politic.*

No.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI.

To the Honorable Harlan F. Stone, Chief Justice, and the Honorable Associate Justices of the Supreme Court of the United States:

The petitioners respectfully petition that a writ of certiorari be issued in this cause to the Supreme Court of Missouri, and in support thereof respectfully submit the following matter:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This petition is filed to obtain a review of a final judgment of the Supreme Court of the State of Missouri, rendered June 5, 1944. Motion for rehearing was denied on July 3, 1944. (R-) The opinion is reported in 181 S. W. (2d) 496. (State ex rel. Cairo Bridge Commission vs. Mitchell, et al.). By its opinion the Court held that an Act of Congress approved June 14, 1938, 52 Stat. 679, exempted the Cairo Bridge Commission from taxation by the State of Missouri on a bridge over the Mississippi River, near Cairo, Illinois. The western part of said bridge being in Mississippi County, Missouri.

The case originated when the State Tax Commission of Missouri caused to be served a notice of assessment for purposes of taxation for the year 1943, of the property of the Cairo Bridge Commission, being that portion of a bridge across the Mississippi River located in Mississippi County, Missouri, and set a hearing for Sept. 20, 1943, on said proposed assessment. After notice to the Cairo Bridge Commission of said proposed assessment a hearing was had thereon on Sept. 20, 1943. The Tax Commission made findings of fact and conclusions of law and found the property of the Cairo Bridge Commission subject to assessment by the State Tax Commission for taxes for the year 1943 on the portion of the Mississippi River Bridge located in Mississippi County, Missouri. The Tax Commission certified its findings of fact and conclusions of law to the State Board of Equalization on the 20th day of Sept. 1943 and on that date the Board of Equalization adopted and approved the findings of the Tax Commission. (R-) The Cairo Bridge Commission obtained a writ

of certiorari from the Supreme Court of Missouri, directed to the Tax Commission and the State Board of Equalization, and the case was argued and submitted in the Supreme Court of Missouri and the Court rendered its opinion upholding the Cairo Bridge Commission's claim to tax exemption, on June 5, 1944. (R-)

The Missouri Supreme Court in said opinion held that Sec. 5 of the Act of Congress of June 14, 1938, which authorized the Cairo Bridge Commission to purchase and operate the bridge across the Mississippi River, adopted tax exemption provisions contained in Sec. 4 of an Act of Congress of April 13, 1934, 48 Stat. 577, which authorized the Cairo Bridge Commission to construct and operate a bridge across the Ohio River at Cairo, Illinois.

The facts involved in this case are not in dispute and the sole question presented is an interpretation of the two acts of Congress mentioned to determine whether the 1938 act does adopt the taxation exemption features of the 1934 act and whether the Cairo Bridge Commission is exempt from state taxation on the Mississippi River Bridge.

The pertinent part of the act of Apr. 13, 1934 reads as follows:

Sec. 4. " * * * The bridge constructed under the authority of this act shall be deemed to be an instrumentality for interstate commerce, the Postal Service, and military and other purposes, authorized by the Government of the United States, and said bridge and ferry or ferries and the bonds issued in connection therewith and the income derived therefrom shall be exempt from all Federal, State, municipal and local taxation, * * *"

The pertinent part of the Act of June 14, 1938, which the Cairo Bridge Commission claims adopts this tax exemption feature of the 1934 Act reads as follows:

Sec. 5. "All of the provisions of section 4 and 5 of said Act of April 13, 1934, relating to the bridge to be constructed, to the bonds to be issued and to the trust agreement to be entered into under the authority of said Act, and relating to the collection of bridge tolls, and to the application of such tolls, shall apply to the bridge to be acquired and to the bonds to be issued under the authority of this Act."

The petitioner here took the position, (a) that the 1938 act does not expressly exempt the Cairo Bridge Commission from taxation on the Mississippi River Bridge. (b) That a claim to tax exemption is strictly construed against the person claiming it. (c) That the Cairo Bridge Commission is not a federal instrumentality. (d) That even if the Commission were to be considered a federal instrumentality it is not such a branch or arm of the federal government as to be entitled to implied immunity. (e) That even an instrumentality of the federal government can not be considered as being entitled to implied immunity from taxation.

The Cairo Bridge Commission took the position that Sec. 5, of the 1938 Act adopted in toto the provisions of Sec. 4, of the 1934 Act and that this was an express exemption of the Cairo Bridge Commission from taxation on the Mississippi River Bridge and also argued that the Cairo Bridge Commission is a Federal Instrumentality and therefore impliedly exempt from state taxation.

The Missouri Supreme Court in the aforementioned opinion sustained the position of the Cairo Bridge Commission.

The petitioner in his motion for rehearing contended that the court had found contrary to the decision in the case, *Miller v. City of Greenville, Miss. et al*, 138 Fed. (2d) 712 (C. C. A.) in holding that the Cairo Bridge Commission was a federal instrumentality in that the Circuit Court of Appeals in the Greenville case in interpreting a federal statute containing expressions identical with those contained in the 1934 and 1938 acts had held that a federal instrumentality was not thereby created.

STATEMENT OF BASIS OF JURISDICTION OF THIS COURT.

The statutory provision which it is believed sustains the jurisdiction of this Court is Sec. 237 (b) of the Federal Judicial Code (28 U. S. C. A. Sec. 344 (b)) and particularly the following provision thereof:

"It shall be competent for the Supreme Court, by certiorari to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State * * * where any title, right, privilege, or immunity is specifically set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied * * *."

Petitioner also relies on Rule 38 of the Rules of this Court and particularly on paragraph 5 thereof.

The date of the decree to be reviewed is July 3, 1944, (date motion for re-hearing was overruled) and the opinion

of the Supreme Court of Missouri is attached to the printed record to be furnished with this application for writ of certiorari.

STATEMENT OF QUESTIONS PRESENTED.

The sole questions presented in this case are (1) Is the provision in Section 5 of the Act of Congress of June 14, 1938 sufficient to be considered as an *express* exemption from state taxation? (2) Is the Cairo Bridge Commission a Federal Instrumentality? (3) If so, are Federal Instrumentalities entitled to an *implied* exemption from state taxation? (4) If there is an implied immunity and the Cairo Bridge Commission can be considered a federal instrumentality, is it such a branch or arm of the Federal Government as to be entitled to *implied* immunity from state taxation?

The Stage of Proceedings, Court In Which And The Manner In Which The Federal Question Sought To Be Reviewed Was Raised.

The whole crux of this case presents a Federal Question. A federal question must be decided to give any decision in the matter inasmuch as an immunity from state taxation is claimed by virtue of an Act of Congress. Also, if implied immunity is claimed both the question of whether the Cairo Bridge Commission is a federal instrumentality and whether federal instrumentalities are entitled to implied immunity are federal questions. These questions were raised and were a vital part of the case from the time of the hearing before the Tax Commission of Missouri on Sept. 20, 1943, to the time of the presentation of the case to the Supreme Court of Missouri on its writ of certiorari to the Tax Commission and Board of Equalization of Missouri.

STATEMENT OF REASONS RELIED ON FOR
ALLOWANCE OF WRIT.

1. The exemption from state taxation is claimed by virtue of an Act of Congress.

2. The decision of the Supreme Court of Missouri is upon an important question of Federal Law which has not been directly passed upon by this Court.

3. The decision of the Missouri Supreme Court is probably not in accord with applicable decisions of this court.

4. An important question on the relation of the Federal and State governments with regard to taxation is raised inasmuch as the State of Missouri has always taxed the Mississippi River Bridge prior to the time this bridge was taken over by the Cairo Bridge Commission and the claim to tax exemption was advanced.

Wherefore, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Missouri, commanding that court to certify and send to this court for its review and determination, on a day certain, to be named therein, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 38,892, May Term, 1944, State of Missouri at the Relation of the Cairo Bridge Commission, a Body Corporate and Politic, relator vs. Jesse Mitchell, Clarence Evans and John T. Waddill, as members of the State Tax Commission of Missouri, Forrest C. Donnell, Dwight H. Brown, Roy McKittrick, Forrest Smith and Wilson Bell, as members of the State Board of Equalization of the State of Missouri, Respondents, and that the

judgment of the Supreme Court of Missouri may be reversed by this Honorable Court and that petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioner will ever pray.

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ROBERT J. FLANAGAN,

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Of Counsel.

SUMMARY OF ARGUMENT

I.

The Supreme Court of Missouri erred in interpreting Sec. 5, of the Act of Congress of June 14, 1938, as *expressly* exempting the Cairo Bridge Commission from State taxation.

(a) A claim to tax exemption must be strictly construed against the person claiming it.

(b) The inference of the Supreme Court of Missouri, that the Commission is exempt, because there was no express provision for the payment of taxes nor a particular fund from which to pay them, is unjustified.

II.

The Cairo Bridge Commission is not a Federal Instrumentality and the Supreme Court of Missouri failed to follow a decision of a Circuit Court of Appeals in interpreting a similar statute when it held the Commission to be a Federal Instrumentality.

III.

Even if the Cairo Bridge Commission were to be considered a Federal Instrumentality it is not such an arm or branch of the Federal Government as to be entitled to *implied* immunity from state taxation.

IV.

There is no implied immunity of a Federal Instrumentality from non-discriminatory State taxes.

ARGUMENT.

I.

The Supreme Court of Missouri erred in interpreting Sec. 5 of the Act of Congress of June 14, 1938 as expressly exempting the Cairo Bridge Commission from State taxation.

(a) Section 5 of the Act of Congress of June 14, 1938 provides:

"All of the provisions of sections 4 and 5 of said Act of April 13, 1934, relating to the bridge to be constructed, to the bonds to be issued and to the trust agreement to be entered into under the authority of said act, and relating to the collection of bridge tolls, and to the application of such tolls, shall apply to the bridge to be acquired and to the bonds to be issued under the authority of this Act."

Therefore, clearly the above section does not expressly contain the words that said bridge and bonds are to be *exempt from taxation*. Any claim that this section grants an express exemption from taxation must be based on an interpretation of whether this section adopts the tax exemption feature of the Act of April 13, 1934. Admittedly it does not expressly do so. This is a claim to exemption from taxation and the rule is that it must be strictly construed. As is stated in 59 C. J. 1135, Sec. 670:

"In pursuance of the beneficent public policy which favors equality in the distribution of the burdens of government, all exemptions of persons or property from taxation are to be construed strictly against the exemption; the intention to create exemptions must affirmatively appear and cannot be raised by implication."

In *Hale v. Iowa State Board of Assessment and Review*, 82 L. Ed. 72, 302 U. S. 95; 58 Sup. Ct. 102, the court stated: "Grants of immunity from taxation in derogation of the sovereign power of a state are strictly construed."

In *Jefferson Branch Bank vs. Shelby*, 66 U. S. 436, 17 L. Ed. 173, the court stated:

"The rule of construction in such a case is that the grant of privileges and exemptions to a corporation are to be strictly construed against the corporation and in favor of the public, that nothing passes but what has been granted in clear and explicit terms; and that neither the right of taxation nor any other power of sovereignty will be held by this court to have been surrendered unless such surrender has been expressed in terms too plain to be mistaken."

Annapolis and Elk Ridge Railroad Company v. County Commissioners of Anne Arundel County 26 L. Ed. 359, 103 U. S. 1, presented to the Supreme Court a case practically identical with the one here.

There Sec. 5 of the Act incorporating the Annapolis and Elk Ridge R. R. Co., provided as follows:

"That the president and directors of the said company shall be and they are hereby invested with all the rights, and powers necessary to the construction and repair of a railroad from the City of Annapolis to connect with the Baltimore and Washington Railroad and for this purpose the said president and directors may have and use all the powers and privileges, and shall be subject to the same obligations, that are provided in the fourteenth, fifteenth, sixteenth, seventeenth, *eighteenth*, nineteenth, twentieth, twenty-first, twenty-second and twenty-third sections of the aforesaid act, entitled an Act to incorporate the Baltimore and Ohio Railroad Company."

Section 18 of the Act incorporating the Baltimore and Ohio Railroad provided, among other things the following: " * * And the share of the capital stock of the said company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the state assenting to this law." Under the last clause of this section it was held at an early date, by the Court of Appeals of Maryland, that the property of the Baltimore and Ohio Company was exempt from taxation.

The Annapolis Company contended that Sec. 5, of its charter above quoted adopted this tax exemption feature of Sec. 18 of the Baltimore and Ohio charter.

The Supreme Court held:

"Grants of immunity from taxation are never to be presumed. On the contrary, all presumptions are the other way, and unless an exemption is clearly established, all property must bear its just share of the burdens of taxation. These principles are elementary and should never be lost sight of in cases of this kind. . . . The powers and privileges of the Baltimore and Ohio Company therefore, which the new company was permitted to 'have and use' were such as were necessary to the construction, repair and use of its railroad. *Exemption from taxation is not one of these privileges. It is undoubtedly a privilege but not necessary to the construction, repair or operation of a railroad.*" (Italics ours)

The Supreme Court of the District of Columbia followed the Annapolis Company case in the case of Alexandria Canal R. R. & Bridge Co. V. District of Columbia, (12 D. C. 217). The facts in that case were that an act of Congress assented to the provisions of a charter granted to the Chesapeake and Ohio Canal Company to construct a canal

and declared its property forever exempt from taxation. By a further provision of the Act, Congress had power to authorize the extension of the canal "into or through the District of Columbia upon the same terms and conditions and with all the rights and privileges and powers of every kind whatsoever, that the company incorporated by this act have to make the Chesapeake and Ohio Canal." Afterwards the Alexandria Canal Company was incorporated and authorized by Congress to construct a canal from the terminus of the Chesapeake and Ohio Canal in Georgetown across the Potomac River. Subsequently, they leased to the Alexandria Canal Railroad and Bridge Company who constructed a bridge over the aforesaid aqueduct. The District of Columbia assessed the bridge for taxation and the company attempted to enjoin enforcement on the ground that the exemption from taxation granted the Chesapeake and Ohio Company had been transmitted to them by the phrase above mentioned giving the later companies the right to construct "upon the same terms and conditions, and with all the rights and privileges and powers of every kind whatsoever that the company incorporated by this act have to make the Chesapeake and Ohio Canal." The court held that the rights, powers and privileges communicated to the Alexandria Canal Company were those which the Chesapeake and Ohio Company had to make the canal and that these might be exercised quite independently of any exemption from taxation and could not be held to include an immunity therefrom. The Court at page 221 stated:

"It is an established principle that the power of taxation is the highest attribute of sovereignty; that its existence will always be presumed; that, wherever

an exemption from taxation is claimed the language surrendering the power must be clear and unmistakable; that a State cannot strip itself of its most essential power by doubtful words; that as its existence rests upon necessity and is inherent in every sovereignty, or wherever on any fair construction of the legislature invoked, there is a reasonable doubt whether the claims for exemption is made out, that doubt must be solved in favor of the sovereignty."

(b) The Supreme Court of Missouri in its opinion (181 S. W. (2d) 496) at page 500 states the fact that the income of the Ohio Bridge was pledged to payment of the principal and interest on the bonds and maintenance, repairs and operation and the provision that the Bridge Commission could not incur any liability other than that made dischargeable solely from funds provided by the act precluded the Commission from paying taxes on the bridge because no money was made available for that purpose. However, on page 501 in speaking of the Greenville Bridge, the Court stated that the law allowing the construction of that bridge contains similar provisions to those aforementioned in the Ohio Bridge Act and holds that these provisions do not preclude the payment of taxes since "they are often classed as 'operating expenses'," citing Words and Phrases, Operating Expenses, page 558.

Fleischer v. Pelton Steel Co. 198 N. W. 444, 183 Wis., 151, held that while a tax is not in the ordinary sense a "debt" because it lacks the essential element of contractual obligation, it is a liability properly chargeable as an "operating expense."

Duluth St. Ry Co. vs. Railroad & Warehouse Commissioners of Minnesota, 4 Fed. 543 l. c. 550, held that in computing the valuation of a street railroad for the pur-

pose of rate making the Federal income tax should be included in "operating expenses."

II.

The Cairo Bridge Commission is not a federal instrumentality and the Supreme Court of Missouri failed to follow a decision of the Circuit Court of Appeals, 8th Circuit, interpreting a similar statute, when it held the Commission to be a federal instrumentality.

The Act of June 14, 1938 (52 Stat. 679) under which the Cairo Bridge Commission was authorized to acquire the Mississippi River Bridge stated that the purpose of the Act was to facilitate interstate commerce, improve the postal service and more adequately provide for military and other purposes, and to secure to the public the use of the hereinafter described bridge free of tolls as promptly as possible.

The Act of April 13, 1934, (48 Stat. 577), which created the Cairo Bridge Commission provided:

"Sec. 8. For the purpose of carrying into effect the objects stated in this Act, there is hereby created the Cairo Bridge Commission and by that name, style and title, said body shall have perpetual succession, may contract and be contracted with, sue and be sued, implead and be impleaded, complain and defend in all courts of law and equity; may make and have a common seal, may purchase or otherwise acquire and hold or dispose of real estate and other property, may accept and receive donations of gifts of money or other property and apply same to the purposes of this act; and shall have and possess all powers necessary and convenient or proper for carrying into effect the objects stated in this Act."

Section 9 provides:

" * * Nor shall any indebtedness created pursuant to this act be an indebtedness of the United States."*
(Italics ours).

Thus the Commission in issuing the bonds to construct the bridge was not backed by the credit of the United States.

Section 7 provided that as soon as the bridge was paid for it should be conveyed to the States of Illinois and Kentucky, or designated agencies thereof.

The Commissioners do not take an oath of office as officers of the United States. The Commission is not designated as a Federal agency or instrumentality.

Section 4 provides:

"The bridge to be constructed under the authority of this Act shall be deemed to be an instrumentality for interstate commerce, the Postal Service, and Military and other purposes authorized by the government of the United States."

In *Miller V. City of Greenville*, 138 Fed. (2d) 712, the Court considered an identical provision to determine whether a federal instrumentality was thereby created and held that it was *not*.

The Act authorizing the Greenville Bridge declared that it was enacted in order "to promote interstate commerce, improve the Postal Service and provide for military and other purposes."

The Court in its decision discussed the presidential *veto* in 1938 of an act authorizing the construction of bridges across the Mississippi River between Iowa and Illinois at the City of Dubuque. The bill authorizing this

bridge contained the following provision. "The bridge or bridges purchased or constructed under the authority of the Act shall be deemed to be *Federal* instrumentalities for interstate commerce, the postal service, and military and other purposes authorized by the Government of the United States" and declares the bridges to be exempt from taxation.

The decision quotes from the presidential veto, at page 717, the following "the effect of this bill would be that by declaring publicly-owned interstate highway bridges to be Federal instrumentalities, such bridges would thereby be exempt from all state and local taxation. I cannot give my approval to this bill, first, because I can find no compelling reason for making publicly-owned interstate highway bridges Federal instrumentalities * * *." This veto occurred on *June 25, 1938*. It should be pointed out that the bill here authorizing the Cairo Bridge Commission to acquire the Mississippi River Bridge was approved June 14, 1938 and must have been on the President's desk at the same time as the aforementioned *vetoed* Dubuque Bill.

The Court held that the Act creating the Greenville Bridge did not create a Federal instrumentality. At page 718 the Court states, "Moreover, from the history of the contemporaneous legislation surrounding the authorization of such bridges it is clear that Congress did not intend that the bridge should be deemed a Federal instrumentality. In the first Act passed by Congress authorizing the construction of the Dubuque bridges, Congress expressly stated that the bridges were deemed *Federal* instrumentalities. After the veto of the first Dubuque bill, a second Dubuque bill was approved in 1939, 53 Stat. 1051, containing no such

expression. Such expression was omitted obviously with deliberate intent from the Act in question here."

The Dubuque Bridge Act, (53 Stat. 1051) as finally passed and approved contained the following expression:

"That in order to facilitate interstate commerce, improve the postal service, and provide for military and other purposes the *City of Dubuque Bridge Commission* are authorized to construct, etc.* * *" (Italics ours).

Sec. 8, of this Act which creates the commission and defines its powers is identical with Sec. 8 of the Act creating the Cairo Bridge Commission. Sec. 11 of this Act also contains the provision "nor shall any indebtedness created pursuant to this Act be an indebtedness of the United States."

This Act passed without presidential veto. He had vetoed the earlier Dubuque Act on the ground that it created a federal instrumentality. It should also be pointed out that Miller V. City of Greenville specifically states that the second Dubuque Bridge Act did *not* create the City of Dubuque Bridge Commission as a *Federal* instrumentality (page 718 of the opinion heretofore quoted).

The City of Dubuque Bridge Commission had a state tax imposed on one of the bridges it acquired under the authority of the aforesaid act. The case came up on appeal to the Supreme Court of Iowa and the Court affirmed the tax and discussed practically all the questions involved here. *The Bridge Commission then attempted to have the decision of the Iowa Supreme Court reversed by certiorari from the Supreme Court of the United States. However, certiorari was denied by the Supreme Court of the United States. 87 L. Ed. 549, 317 U. S. 686.*

The Iowa Supreme Court case is titled Appeal of the City of Dubuque Bridge Commission and is reported in 5 N. W. (2d) 334. The Court held that the City of Dubuque Commission is *not* a Federal Instrumentality. At page 338 of its opinion the court states: "With this history in mind, it is evident that Congress, in the passage of the present act, had no intention of declaring that the bridge should be exempt from taxation, either directly or by designating it a government instrumentality. Appellant argues that the Commission is a federal instrumentality and cites various cases, among them, *Graves V. People of the State of New York* The only question concerned in the *Graves* case is whether the tax laid by the state upon the salary of an employee of a corporate instrumentality of the Federal government imposes an unconstitutional burden upon that government. The court in that case considers the question of tax immunity of either state or Federal government and its instrumentalities as resting upon an implied limitation on the taxing power of each, such as to forestall undue interference through the exercise of that power with the governmental activities of the other. The opinion reviews *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. Ed. 579, and various other cases and holds that when the national government lawfully acts through a corporation which it owns and controls those activities are governmental functions entitled to whatever tax immunity attaches to those functions when carried on by the government itself through its departments.

The trouble with the application of this case to the case at bar is that the Dubuque Bridge Commission is not a corporation which the United States owns and controls. The bridge is not a government owned structure. (Italics ours)

III.

Even if the Cairo Bridge Commission were to be considered a Federal instrumentality it is not such an arm or branch of the Federal government as to be entitled to implied immunity from state taxation.

The Iowa case above referred to (5 N. W. 2d. 334) thoroughly discussed the Federal decisions on this matter in considering the question relative to the City of Dubuque Bridge Commission. As has been pointed out, the City of Dubuque Bridge Commission is exactly the same type of corporation as the Cairo Bridge Commission.

At page 339 of its opinion the Court states in discussing the case of Indian Motorcycle Co. V. United States, 283 U. S. 570, 75 L. Ed. 1277: "In considering the foregoing case, assuming that the Bridge Commission acts as agency of the government, it would further be necessary that through this agency, the United States exercises its governmental powers, a proposition which we do not think the facts in this case establish. And as indicated in Fox Film Corporation V. Doyal, 286 U. S. 123, 76 L. Ed. 1010, citing McCulloch v. Maryland, this principle of immunity does not extend to anything lying outside of or beyond governmental functions and their exertion, and does not exist where no direct burden is laid upon the governmental instrumentality, and there is only a remote, if any, influence upon the exercise of the function of government."

Again at page 345 the Court states: "The property authorized to be purchased and held by the Commission is in no part contributed to by the Federal Government. Its revenue is derived from tolls. No burden on the Federal Government is created and there is no substantial in-

terference with governmental powers by the imposition of a tax as other like property is taxed."

These statements apply with equal force to the situation here. No part of federal funds were contributed to purchase the Mississippi River Bridge. The entire revenue is derived from tolls and the tax would have to be paid from tolls.

IV.

There is no implied immunity of a Federal Instrumentality from non-discriminatory state taxes.

As was stated in *Helvering V. Gerhardt*, 82 L. Ed. 1427, 304 U. S. 405, 58 S. Ct. 969:

"The Constitution contains no express limitation on the power of either a state or the national government to tax the other or its instrumentalities. The doctrine that there is an implied limitation stems from *McCulloch V. Maryland* 4, Wheat. 316, 4 L. Ed. 579, in which it was held that a state tax laid specifically upon the privilege of issuing bank notes, and in fact applicable alone to the notes of national banks, was invalid since it impeded the national government in the exercise of its power to establish and maintain a bank implied as an incident to the borrowing, taxing, war and other powers specifically granted to the national government by Art. 1, Sec. 8 of the Constitution. It was held that Congress, having power to establish a bank by laws, which, when enacted under the Constitution, are supreme, also had power to protect the bank by striking down the state action impeding its operations; and it was thought that the state tax in question was so inconsistent with Congress's Constitutional action in establishing the bank as to compel the conclusion that Congress intended to forbid application of the tax to the Federal Bank Notes." (Italics ours).

The Court also states at page 413 in discussing the decision in *McCulloch V. Maryland*:

"It was perhaps enough to have supported the conclusion that the tax was invalid, that it was aimed specifically at national banks and thus operated to *discriminate against the exercise by the Congress of a national power.*" (Italics ours).

In *Graves V. New York*, 83 L. Ed. 927 306 U. S. 466, 59 S. Ct. 595 the Court to a great extent limited the doctrine advanced in *McCulloch V. Maryland*. Thus, at page 479, the court states:

"*It is true that the silence of Congress, when it has authority to speak* (Italics ours) may sometimes give rise to an implication as to the Congressional purpose. The nature and extent of that implication depend upon the nature of the Congressional power and the effect of its exercise. But there is little scope for the application of that doctrine to the tax immunity of governmental instrumentalities. The constitutional immunity of either government from taxation by the other, where Congress is silent has its source in an implied restriction upon the powers of the taxing government. So far as the implication rests upon the purpose to avoid interference with the functions of the taxed government or the imposition upon it of the economic burden of the tax, it is plain that there is no basis for implying a purpose of Congress to exempt the federal government or its agencies from tax burdens which are unsubstantial or which courts are unable to discern. *Silence of Congress implies immunity no more than does the silence of the Constitution.* (Italics ours). It follows that when exemption from state taxation is claimed on the ground that the federal government is burdened by the tax, and Congress has disclosed no intention with respect to the claimed immunity, it is in order to consider the nature and effect

of the alleged burden, and if it appears that there is no ground for implying a constitutional immunity, there is equally a want of any ground for assuming any purpose on the part of Congress to create an immunity."

In 140 A. L. R. 622, Note II, it is stated:

"The power of a state to impose a tax in connection with the purchase of goods by or for the benefit of the Federal Government is delimited in part by the doctrine of implied constitutional immunity. In its application to the field of state taxation this doctrine, which is commonly credited to pronouncements by Chief Justice Marshall in *McCulloch v. Maryland* may be broadly stated to be that the Constitution of the United States implies an immunity from state taxation of the means and instrumentalities employed by the Federal Government to carry on its functions But the precise reach of the doctrine of implied immunity is obscure, and the obscurity of its compass is attributable, basically, perhaps *to the weakness of the foundation upon which it is usually regarded as having been placed*—Marshall's rhetorical flourish in *McCulloch v. Maryland* (U. S.) *supra*, that 'the power to tax involves the power to destroy,' a dictum which the pen of Justice Holmes inked out in a stroke with his dissenting aphorism in *Panhandle Oil Co. v. Mississippi*: "The power to tax is not the power to destroy while this court sits.'"

The chief criticism of the implied immunity doctrine seems to rest on the fact that the Constitution expressly gives Congress by Sec. 8 of Art. 1, the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any department or office thereof."

It is clear that under this section Congress is given the power to *expressly* exempt its instrumentalities from taxation where such exemption would be necessary to carry out governmental functions. It is argued that since Congress is expressly granted this power to grant tax immunity the argument of silence by Congress on this point would be that it did *not* intend tax immunity rather than implying that it did. There is no room for a Constitutional implication of tax exemption where the Constitution has expressly given Congress the right to make the decision in this regard.

Numerous law review articles have been written on this question. In Vol. XXIV, Washington University Law Quarterly No. 1, (1938) in an article on Intergovernmental Tax Immunity the writer concludes: (p. 89)

"As this article is written a special Senate Committee is, acting pursuant to a Resolution, conducting a thorough study and investigation with regard to the entire doctrine of intergovernmental tax immunity. The results of this investigation may encourage the enactment of appropriate legislation. The revelations made by the Department of Justice study will be carefully weighed by an understanding court. The same court will know that unlike the rule of *res judicata*, *stare decisis* is not 'a universal inexorable command' and that at best it has but 'a limited application in the field of constitutional law.' These factors, buttressed by the fact that other federal governments have continued to function uninterruptedly although there the earlier rules of immunity have disappeared may induce the Court to depart from their jural pronouncements of past decades. Tax school deans, and professors, lawyers and laymen, and students and politicians are well prepared for the formal obituary of the time-worn dusty doctrine of intergovernmental

tax immunity. It is the nomenclature of a disappearing age!"

So also in Vol. 17, *Notre Dame Lawyer* (January, 1942) No. 2, page 151 in a note on Federal and State immunity from taxation the author at page 157 states:

"But, the author submits that it is not beyond the realm of possibility that the courts might allow a non-discriminatory tax to be levied directly on one government by another government. For the whole scheme of sovereignty immunity from taxation is based on judicial fiat and not any constitutional principle, this theory of sovereignty has developed from Marshall's obiter dicta in *McCulloch V. Maryland*, the power to tax is the power to destroy, rather than from the Constitution itself. To bolster this concept it seems pertinent to reiterate Mr. Justice Frankfurter's statement in a recent case, 'The judicial history of the doctrine of immunity is a striking illustration of an occasional tendency to encrust unwarranted interpretation upon the Constitution and thereafter to consider what has been judicially said about the Constitution, rather than to be primarily controlled by a fair interpretation of the constitution but the ultimate touchstone of Constitutionality is the Constitution itself and not what has been said about it! Further Mr. Justice Frankfurter agrees with Mr. Justice Holmes that the power to tax is not the power to destroy while this court sits.

"In view of the fact that the doctrine of *McCulloch V. Maryland* has been severely shaken by recent decisions it is not beyond speculation to suppose that one day the court may openly allow one sovereignty of our dual system to tax the governmental functions of the other sovereignty if the court finds that the tax is not destructive, or discriminatory.

"The present trend of the court is to restrict the 'immunity doctrine' and the future may see complete

abolishment ——— for the author submits that it is within the power of the Courts to reach this conclusion."

See also Articles: Mich. Law Review, Vol. 40, (1942) No. 3, p. 457; Virginia Law Review, Vol. 28 (1941) No. 2, p. 251; Yale Law Journal Vol. 51 (1942) No. 3, p. 482; Boston Univ. Law Rev. Vol. XXII (1942) No. 1, p. 120; University of Chicago Law Review, Vol. 9, (1942) No. 2, p. 351.

CONCLUSION.

It is therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, and that to such end a writ of certiorari should be granted, and this Court should review the decision of the Supreme Court of Missouri and finally reverse it.

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OCT 21 1944

CHARLES ELMORE OROPLEY
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1944.

JESSE MITCHELL, CLARENCE EVANS
and JOHN T. WADDILL, as Members
of the State Tax Commission of
Missouri, et al.,

Petitioners,

vs.

STATE OF MISSOURI, at the Relation
of the Cairo Bridge Commission, a
Body Corporate and Politic,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION.

GEORGE A. McNULTY,
Of St. Louis, Missouri,

W. E. CUMMINS,
Of Cairo, Illinois,

EMMET T. CARTER,
DAVID A. McMULLAN,
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IN THE
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STATE OF MISSOURI, at the Relation
of the Cairo Bridge Commission, a
Body Corporate and Politic,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION.

OPINION BELOW.

The opinion of the Supreme Court of the State of Missouri (R. 178-188) is reported in 181 S. W. (2d) 496. It is not yet officially reported.

JURISDICTION.

The order of the Supreme Court of Missouri which petitioners seek to have reviewed was entered on July 3, 1944 (R. 195).

Petitioners invoked the jurisdiction of this Court under Section 237 (b) of the Judicial Code. See also Rule 38, Par. 5 of the rules of this Court.

STATUTES INVOLVED.

“An Act creating the Cairo Bridge Commission and authorizing said Commission and its successors to construct, maintain, and operate a bridge across the Ohio River at or near Cairo, Ill.,” approved April 13, 1934, 48 Stat. 577.

“An Act to authorize the Cairo Bridge Commission, or the successors of said Commission, to acquire by purchase, and to improve, maintain, and operate a toll bridge across the Mississippi River at or near Cairo, Ill.,” approved June 14, 1938, 52 Stat. 679.

QUESTION PRESENTED.

The Act of June 14, 1938 provides that all of the provisions of Sections 4 and 5 of the Act of April 13, 1934, “relating to the bridge to be constructed, to the bonds to be issued and to the trust agreement to be entered into under the authority of said Act, and relating to the collection of bridge tolls and to the application of such tolls” should apply to the bridge to be acquired and to the bonds to be issued under the authority of the 1938 Act. The issue is whether the 1938 Act incorporated by reference as applicable to the bridge to be acquired under its authority, the provision in Section 4 of the 1934 Act which, with reference to the bridge to be constructed under the authority therein conferred, provided that “said bridge * * * shall be exempt from all federal, state, municipal and local taxation.”

STATEMENT.

Respondent desires to direct attention to the fact that the Act of Congress of April 13, 1934, 48 Stat. 577, referred to on page 3 of petitioners' application, created the Cairo Bridge Commission. Respondent desires to correct what it believes is an inaccurate statement on page 4 of peti-

tioners' application, with reference to the position taken by the petitioners before the Supreme Court of the State of Missouri. The position of petitioners was accurately stated by the Supreme Court of the State of Missouri, as follows:

"It is not contended that Congress lacked the power to provide the Mississippi River bridge (fol. 231) here involved should be tax exempt. Respondents simply assert that on a proper construction the reference in Sec. 5 of the 1938 Act back to Secs. 4 and 5 of the 1934 Act, did not make the bridge tax exempt; although they concede those two sections of the 1934 Act did exempt the Ohio River bridge from taxation" (R. 181).

"It is admitted here that the 1934 Act of Congress created the relator Bridge Commission as a Federal instrumentality; and that it did expressly exempt the Ohio River bridge from all taxation" (R. 184).

Attached as an appendix are the points and authorities of petitioners' (Respondents in State Court) statement, brief and argument filed in the Supreme Court of the State of Missouri. The rules and decisions of the Supreme Court of the State of Missouri require all points that are to be considered by the Court to be listed under Points and Authorities.¹

¹ Rules of the Supreme Court of Missouri, 15: "The brief for appellant shall distinctly allege the errors committed by the trial court and shall contain in addition thereto: * * * (3) a statement, in numerical order, of the points relied on, with citation of authorities thereunder, and no reference will be permitted at the argument to errors not specified; * * * The respondent in his brief may adopt the statement of the appellant; or, if not satisfied therewith, he shall in a concise statement correct any errors therein. In other respects the brief of respondent shall follow the order of that required of appellant. No brief or statement which violates this rule will be considered by the Court."

"Rule 33. Procedure as to Original Writs. * * * On final hearing printed abstracts and briefs shall be filed in all respects as is required in appeals and writs of error in ordinary cases."

Copeland v. Smith, 197 S. W. 348 (Mo. Sup.) (not in official reports);

Schroeder v. Edwards, 184 S. W. 108, 267 Mo. 459;

Eisenbarth v. Powell Bros. Truck Lines, 161 S. W. (2d) 263 (Mo. Sup.) (not yet officially reported).

SUMMARY OF ARGUMENT.

The Supreme Court of the United States should not issue its writ of certiorari because:

I.

The Supreme Court of the State of Missouri has decided no Federal question of substance or of general application.

(a) The decision involves a special Act of Congress, purely local in scope and consideration;

(b) The decision does not interpret an act of general application and does not involve in an adverse manner any Federal agency;

(c) The decision involves no substantial Federal question.

II.

The decision of the Missouri Supreme Court is not in conflict with applicable decisions of this Court or any federal court, or any state court on a substantial federal question or matter of governmental policy.

III.

A review of the Missouri Supreme Court decisions would only result in an affirmance because contention of petitioners is without substantial foundation or merit.

ARGUMENT.

I.

The Supreme Court of the State of Missouri Has Decided No Federal Question of Substance or of General Application.

(a) The Cairo Bridge Commission was created by an Act of Congress approved April 13, 1934 (R. 47-54). This Act authorized the Commission to construct and operate a bridge across the Ohio River. Subsequently, the Congress of the United States passed an Act, approved June 14, 1938 (52 Stat. 679) (R. 54-57), which authorized the Cairo Bridge Commission to acquire by purchase and to maintain and operate a toll bridge across the Mississippi River, at or near Cairo, Illinois.

Subsequently the State of Missouri attempted to assess for taxation that part of the Mississippi River Bridge located in Missouri and the Cairo Bridge Commission instituted proceedings in the Missouri Supreme Court to declare said assessment void. The question involved is the interpretation of the Act of Congress creating the Cairo Bridge Commission and the Act of Congress, authorizing the Cairo Bridge Commission to acquire the Mississippi River Bridge. Such legislation affects the rights of the parties involved as to a particular piece of property as a result of special legislation with reference to a particular situation.

(b) The legislation being special, the decision did not interpret an Act of general application, and the decision being in favor of tax exemption, it does not adversely affect any federal agency. As stated by the Missouri Supreme Court (R. 179), the only question was that of statutory construction, which involves certain references made by the Act authorizing acquisition of the

bridge to a prior Act creating the Cairo Bridge Commission. This merely required the Supreme Court of the State of Missouri to apply the generally recognized doctrine that in the drafting of legislation the legislative body has the right to include other acts or portions thereof by reference. Reference statutes are frequently used to avoid unnecessary repetition, and their validity has been generally recognized in many jurisdictions.²

(c) Petitioners state (Point IV of Statement of Reasons Relied on for Allowance of Writ, p. 7) that "An important question on the relation of the federal and state governments with regard to taxation is raised, inasmuch as the State of Missouri has always taxed the Mississippi River Bridge prior to the time this bridge was taken over by the Cairo Bridge Commission and the claim to tax exemption was advanced." The statement is not developed in the argument but it is a sufficient answer to point out that the bridge was previously owned by a private corporation and the proposition asserted by petitioners has no more validity than would the contention that taxes should be levied on the new Federal Court House on Twelfth and Market Streets, St. Louis, Missouri, because the land was previously taxed before the United States Government acquired the property.

² *Binghamton Bridge*, 3 Wall. 51, 18 L. Ed. 137;
Engel v. Davenport, 271 U. S. 33, 70 L. Ed. 813;
State v. Lloyd, 320 Mo. 236, 7 S. W. (2d) 344;
Brown v. State, 323 Mo. 138, 19 S. W. (2d) 12, 1. c. 17;
State ex rel. School District of Kansas City v. Lee, 334 Mo. 513, 66 S. W. (2d) 521;
State v. Peyton, 234 Mo. 517, 137 S. W. 979;
U. S. ex rel. London v. Phelps, 22 Fed. (2d) 288;
Three Heirs of Ludlow v. Johnson, 3 Ohio Rep. (Hammond) 553, 1. c. 572;
The Brazil, 134 Fed. 29;
Quinlan v. Houston and T. C. Ry. Co., 34 S. W. 738 (Texas);
People ex rel. Everson v. Lorillard, 31 N. E. 1011, 135 N. Y. 285;
25 R. C. L. 907.

II.

The Decision of the Missouri Supreme Court Is Not in Conflict With Applicable Decisions of This Court or Any Federal Court, or Any State Court on a Substantial Federal Question or Matter of Governmental Policy.

The decision of the Supreme Court of the State of Missouri in the case at bar is not in conflict with the case of **Miller et al. v. City of Greenville, Mississippi, et al.**, 138 Fed. (2d) 712. The City of Greenville case did not decide the matter upon the merits of the plaintiff's claim to tax exemption. The Court in its opinion states (l. c. 721): "Reversed with directions to dismiss, without decision or any indication of opinion upon the merits of the plaintiff's claim to tax-exemption." The case was reversed on jurisdictional grounds. Moreover, the type of statute in the City of Greenville case was entirely different from that involved in this case. The City of Greenville was empowered to construct, maintain and operate a bridge across the Mississippi River. The Court in the Greenville case specifically pointed out that the bridge was owned and operated by the City. In the case at bar the Commission is a creature of Congress. In the City of Greenville case there was no clause in the Act which granted tax-exemption, nor was there any reference to any other similar statute. The distinction between the case at bar and the City of Greenville case was pointed out in the decision of the Missouri Supreme Court from which we quote:

"Respondents say that conclusion is directly contrary to the ruling in **Miller v. City of Greenville, Miss.** (8th Ct.), 138 Fed. (2d) 712, 717; but we think not. That case, a declaratory judgment suit, was not ruled on the merits. It held no issues were presented

upon which Federal jurisdiction could be appropriately exercised; and reversed and remanded the cause with directions to the Federal District Court to dismiss the suit without expressing any opinion on the merits. Nevertheless the Circuit Court of Appeals did express some conclusions adverse to a claimed tax exemption, in stating why Federal jurisdiction should not be exercised. So we consider it. That suit was a bridge tax exemption case; the bridge was built across the Mississippi River under an Act of Congress (52 Stat. 681) dated June 14, 1938, the same date as that of the 1938 Act here involved; and the Act did provide that the bridge tolls should be so adjusted as to cover the construction, maintenance, repair and operating costs of the bridge, and that after it had been paid for it should be maintained and operated toll free. But otherwise the facts were entirely different. * * *

“The Act providing therefor was a short, one page statute, which merely authorized the City of Greenville to construct it and conferred the power of eminent domain for the particular project as possessed by railroad and bridge corporations. It did not say the bridge should be a Federal instrumentality. * * * And Congress made no reference whatever in the Greenville Act to exempting the bridge from taxation” (R. 186).

Petitioners recite (Petition for Writ, p. 17) that part of the Greenville decision which quotes from the presidential veto. The point here attempted to be made was, we believe, disposed of by the decision of the Supreme Court of the State of Missouri. The Court said:

“Respondents pick up that reasoning and point out that the instant 1938 Act authorizing the purchase of the Mississippi River bridge at Cairo, also was approved on June 14, only eleven days before the President vetoed the first Dubuque Act. Thence they argue he must have had the same adverse views in

mind when he approved the 1938 Cairo Act; and from that they conclude he thought the reference in Sec. 5 of said 1938 Cairo Act to Sec. 4 of the 1934 Cairo-Ohio River Bridge Act did not adopt the tax exemption clause therein; for otherwise he would have vetoed the 1938 Cairo Act also. We cannot say. The President may have felt that since one of these two Government owned and closely adjacent bridges stemming out of Cairo was tax exempt, the other ought to be likewise; or the point may have been overlooked by his advisers" (R. 187).

The decision of the Missouri Supreme Court is not in conflict with the case of **Appeal of the City of Dubuque Bridge Comm.**, 5 N. W. (2d) (Iowa) 334, because there the Act contained no tax-exempt feature and did not designate the bridge as a federal instrumentality. In the Dubuque case, the Court said, l. c. 338: "With this history in mind, it is evident that Congress in the passage of the present Act had no intention of declaring that the bridge should be exempt from taxation, either directly or by designating it a governmental instrumentality."

III.

A Review of the Missouri Supreme Court Decisions Would Only Result in an Affirmance Because Contention of Petitioners Is Without Substantial Foundation or Merit.

It was admitted before the Missouri Supreme Court that the Congress of the United States had the power to establish and provide for the operation of bridges as a proper function of the federal government under the Constitution, and had the right to protect agencies so established from the burden of local taxation. The only question remaining, then, was whether or not Congress did exempt from taxation the Mississippi River Bridge, the property of

the Cairo Bridge Commission. Regardless of whether or not the Cairo Bridge Commission is such an arm of the federal government that it is not subject to taxation, since it is quite clear that Congress did exempt the Cairo Bridge, we submit that the decision of the Supreme Court of the State of Missouri arrived at the correct result. The Supreme Court of the State of Missouri stated (Transcript, p. 179): "This raises a question of statutory construction which involved certain references made by that Act to a prior Act of Congress creating the relator, Cairo Bridge Commission. It is the only question we shall discuss, since we think it is decisive of the case." The Supreme Court of Missouri further stated (Transcript, p. 181): "It is not contended that Congress lacked the power to provide the Mississippi River Bridge here involved should be tax-exempt."

It is now urged for the first time (see Appendix) that this being a claim to exemption from taxation the rule is that it must be strictly construed. The Supreme Court of the State of Missouri stated (Trans. p. 184):

"The general doctrine is that tax exemption statutes should be strictly construed because taxes are imposed on the whole citizenry for the support of the government, and exemptions are discriminatory. 61 C. J., Sec. 396, p. 392. 'Taxation is the rule, exemption is the exception.' *Y. W. C. A. v. Baumann*, 344 Mo. 898, 902 (1), 130 S. W. (2d) 499, 501 (1). But as to property owned by the State or any of its political subdivisions, the doctrine is reversed. There taxation is the exception and not the rule."

This is well supported by the authorities.³

³ *Austin v. Alderman*, 7 Wall. (U. S.) 694, 19 L. Ed. 224, 1 c. 226;
Russell v. Sebastian, 233 U. S. 195, 58 L. Ed. 912;
Mark Graves v. State of New York ex rel. James B. O'Keefe, 83 L. Ed. 927, 306 U. S. 466;
State v. Johnston, 214 Mo. 636, 113 S. W. 1083;
Mullins v. Mt. St. Mary's Cemetery Assn., 239 Mo. 681, 144 S. W. 109.

Section 4 of the 1934 Act (Trans. pp. 48-49), with reference to the bridge to be constructed, states that "Said bridge * * * shall be exempt from all federal, state, municipal and local taxation."

Section 5 of the 1938 Act states (Trans. p. 56): "**All** of the provisions of Sections 4 and 5 of said Act of April 13, 1934, **relating to the bridge to be constructed**, to the bonds to be issued and to the trust agreement to be entered into under the authority of said Act, and relating to the collection of bridge tolls and to the application of such tolls, **shall apply to the bridge to be acquired** and to the bonds to be issued under the authority of this Act." (Emphasis supplied.) The tax-exemption feature in the 1934 Act related to the bridge to be constructed, therefore it applies to the bridge to be acquired under the 1938 Act.

We submit that there could have been no better method chosen to identify the provisions contained in Sections 4 and 5 of the 1934 Act, which were desired to be included in the 1938 Act than that selected. It is short, concise, complete and descriptive.

Petitioners cite the case of **Annapolis & Elkridge R. R. Co. v. County Commissioners of Anne Arundel County**, 26 L. Ed. 359, 103 U. S. 1. That case contained words of limitation in the granting of tax-exemption. Such is not so in the case at bar. The Act involved in the Annapolis & Elkridge R. R. Co. case granted such powers as were necessary to the construction and repair of the railroad, and the Court stated: "Consequently, on such of the privileges of the old company as were necessary could be enjoyed by the new as were appropriate to the work the new company was authorized to do." The case held that exemption from taxation was not necessary to the construction and repair of the railroad.

The case of **Alexandria Canal R. R. and Bridge Co. v. District of Columbia**, 12 D. C. 217, is easily distinguishable

from the case at bar, as there again tax exemption was not specifically granted and all rights, privileges and powers were limited.

CONCLUSION.

It is respectfully submitted that a writ of certiorari to review the decision of the Supreme Court of Missouri should be denied.

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APPENDIX.

POINTS AND AUTHORITIES IN BRIEF OF PETITIONERS (RESPONDENTS BELOW) IN STATE COURT.

I.

The Cairo Bridge Commission is not such an arm of the Federal government that it is not subject to taxation.

United States v. Query, 21 F. Supp. 784, 786;
Helvering v. Gerhardt, 304 U. S. 405, 409, 58 S. Ct.
969, 1. c. 974, 82 L. Ed. 1427;
Miller et al. v. City of Greenville et al., 138 F. (2d)
712, 1. c. 717.

II.

The construction of a Federal Act by a Federal court is conclusive on the state court.

Miller et al. v. City of Greenville et al., 138 F. (2d)
712;
14 Am. Jur., p. 339, Sec. 121;
Foster Lumber Co. v. Atchison, Topeka & Santa Fe
Railway Co. et al., 270 Mo. 629, 1. c. 636;
State ex rel. Railroad Co. v. Nortoni, 55 S. W. (2d)
272, 331 Mo. 764, 1. c. 769.

III.

Congress has not exempted from taxation the Mississippi River Bridge, the property of the Cairo Bridge Commission.

State v. Lloyd, 320 Mo. 336, 7 S. W. (2d) 344.

IV.

The construction placed on this Act by the Congress and the President is persuasive.

Miller et al. v. City of Greenville, 138 F. (2d), l. e. 717;

Automobile Gasoline Co. v. City of St. Louis, 32 S. W. (2d) 281;

State ex rel. Hanlon v. City of Maplewood, 99 S. W. (2d) 138;

State ex rel. Union Electric Light & Power Co. v. Baker, 293 S. W. 399.

V.

The taxing of the bridge would not be contrary to the provisions of the Act.

Miller et al. v. City of Greenville et al., 138 F. (2d) 712.

